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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,933	12/19/2001	Susanne Birkel	1924	2621

7590 11/07/2003

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103 East Neck Road
Huntington, NY 11743

EXAMINER

VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 11/07/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary*file copy***Application No.**

10/018,933

Applicant(s)

BIRKEL ET AL.

Examiner

JYOTHSNA A VENKAT

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 43-75 is/are pending in the application.
- 4a) Of the above claim(s) 59 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 60-75 is/are allowed.
- 6) ☒ Claim(s) 43-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Receipt is acknowledged of IDS, extension of time and reconsideration filed on 7/18/03. Claims 43-58 and 60-75 are pending in the application and the status of the application is as follows:

Election/Restrictions

Applicants in the response, request reinstatement of dependent claim 59 and inclusion of claim 59 in any patent containing the generic claim on which claim 59 depends and argue, all that is required for unity of invention is “ common distinguishing feature “ in all claims.

In response to this, the examiners position is that, applicants canceled claims 1-42 and added claims 43-75. The group II is drawn to claim 41(independent) and in response to the lack of unity, applicants canceled claims 1-42 and made the independent claim 41 as dependent claim 59. Applicant's election is without traverse, and claim 59 is withdrawn from consideration. See paper no. 7.

Applicants submit” encyclopedia of Industrial chemistry (2002), in order to overcome the rejection of claims under 35, U. S. C. 112, 2nd paragraph for the expression “ super absorbing”. The reference is not a competent reference. Note the filing date of the instant application is 4/7/2001 and applicants are claiming benefit of the foreign priority document to 4/19/2000. The rejection of the claims under, 2nd paragraph is withdrawn **based upon the description of the polymers at page 3 of the specification to the specific polymers only.**

Claim Rejections - 35 USC § 102

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 43-58 are rejected under 35 U.S.C. 102(e) as being anticipated by U. S. Patent 6,358,493.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Response to Arguments

2. Applicant's arguments filed 7/18/03 have been fully considered but they are not persuasive.
3. Applicants argue that the patent is not a competent reference as the filing date of the instant application based upon the foreign priority document is 4/19/2000 which is earlier than 6/9/2000.
4. In response to the above argument, it is the position of the examiner that the reference is a competent as there is no certified translated text of the foreign priority document.
5. Claims 43-47, 49-51, and 57-58 are rejected under 35 U.S.C. 102(a) as being anticipated by WO 01/03658('658).

See page 2, lines 4-7 for the super absorbing polymer, see also the paragraph bridging pages 3-4, see the examples 2-5. See also page 3, summary of the invention which has micro

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gel polymers which reads on the gel comprising undissolved swollen particles of at least super absorbing polymer. The polymer is the same and therefore claims 44-47,49-51 are inherent. Claims are drawn to compositions and the claims 57-58 are also anticipated.

Response to Arguments

6. Applicant's arguments filed 7/18/03 have been fully considered but they are not persuasive.

Applicants argue that the WO document discloses micro gel-forming cationic copolymers, which are not super absorbing polymers, and the example 5 does not disclose cosmetic preparations containing water-swollen undissolved particles.

In response to the above argument, it is the position of the examiner that the WO document discloses polymers absorbing large amounts of water. When these polymers absorb water they are swollen and they form gel, when the polymer forms a form gel, it has undissolved water-swollen particles. Applicants attention is drawn to page 2, 3rd paragraph where the specification teaches that "on contact with water, super absorbing polymers form swollen, gelled particles". Therefore the polymers of the WO document are same as the super absorbing polymers claimed broadly in the instant application. **Furthermore, applicants did not present any evidence that the polymers of the WO document are not super absorbing polymers.** The 102 rejection is deemed proper.

Allowable Subject Matter

7. Claims 60-75 are allowed.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

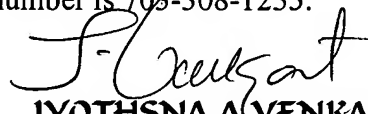
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A VENKAT whose telephone number is 703-308-2439. The examiner can normally be reached on Monday-Thursday, 9:30-7:30:1st and 2nd Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN K PAGE can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.


JYOTHSNA A VENKAT
Primary Examiner
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